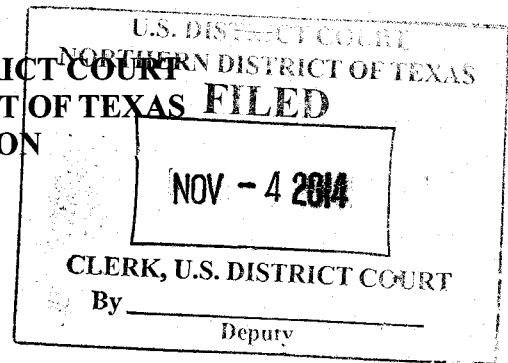


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA, *ex rel.*
DARILYN JOHNSON,

Plaintiff,

v.

KANER MEDICAL GROUP, PA, AND
DAVID KANER,

Defendants.

Case No. 4:12-CV-757-A

Jury Trial Demanded

SECOND AMENDED COMPLAINT

INTRODUCTION

1. Qui tam relator Darilyn Johnson ("Johnson" or "Relator"), by her attorneys, individually and on behalf of the United States of America, files this second amended complaint against Defendants Kaner Medical Group, PA ("KMG") and David Kaner ("Kaner") (collectively, "Defendants") to recover damages, penalties, and attorneys' fees for violations of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* ("FCA" or "False Claims Act") and for Defendants' unlawful retaliation against Johnson in violation of 31 U.S.C. § 3730(h).

2. The violations of the False Claims Act arise from Defendants' fraudulent claims on the Centers for Medicare and Medicaid Services ("CMS"), TRICARE, part Medicare, and the Federal Medicare program.

3. Under controlling law and regulations, healthcare providers are able to seek reimbursement from Medicare for the services they provide patients covered by the service.

4. Under controlling law and regulations, healthcare providers are able to seek reimbursement from TRICARE for the services they provide patients covered by the service.

5. With actual knowledge and/or deliberate indifference and/or reckless disregard for the truth, Defendants repeatedly made it common practice to bill for services provided by a non-licensed practitioner to patients under the National Provider Identifier (NPI) of a doctor who was not providing direct supervision to that non-licensed provider at the time the service was provided.

6. With actual knowledge and/or deliberate indifference and/or reckless disregard for the truth, Defendants held a non-licensed practitioner out as a Medical Doctor on their website.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 31 U.S.C. §§ 3732(a). Johnson's federal cause of action for unlawful retaliation is authorized by 31 U.S.C. § 3730(h). Thus, this Court has subject matter jurisdiction over this action.

8. This Court has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) because Defendants are headquartered in and do business in this judicial district, and the actions and inactions of the Defendants at issue in this action occurred in this judicial district.

9. Venue is proper in this Court under 28 U.S.C. §§ 1391(c) and 1395(a), because the complained of illegal acts occurred within this judicial district.

THE PARTIES

10. Johnson is a citizen of the United States of America and a resident of Fort Worth, Texas.

11. Johnson worked for KMG as a patient financial counselor from on or about April 9, 2012, until on or about June 26, 2012.

12. By virtue of her employment and job duties at KMG, Johnson was in a position to see most of KMG's patients, and regularly reviewed patient insurance and medical records, and would sometimes meet with the patients to explain their insurance coverage.

13. KMG is a Texas corporation that takes in approximately \$2.2 million in annual sales.

14. KMG first incorporated in Texas in 1996.

15. KMG provides a range of medical services to its customers, including internal medicine, child/pediatric healthcare, cardiology services, dermatology, physical therapy/rehabilitation, worker's compensation, family medicine, allergy screenings/therapy, women's healthcare, elder care, diagnostic testing, and pre-employment drug screens/physicals.

16. KMG runs two business locations: a headquarters in Bedford, Texas, and another location in Euless, Texas. KMG owns both of these business locations.

17. David Kaner is the primary owner of KMG and is a medical practitioner at KMG.

FACTUAL ALLEGATIONS

KMG BILLS MEDICARE AND TRICARE FOR SERVICES PROVIDED BY UNLICENSED INDIVIDUALS WITHOUT THE PROPER SUPERVISION

18. KMG maintains an allergy clinic consisting of three rooms within KMG's Bedford medical suite where it tests and treats patients for allergies. The allergy clinic is not a standalone, or separate clinic within the KMG organization.

19. Otto Gambini ("Gambini") is a medical assistant at KMG who practices in, manages, and coordinates the KMG allergy clinic. Gambini oversees two other medical assistants who provide allergy services to patients within KMG's allergy clinic.

20. Most days, the medical assistants who provide allergy services start seeing patients at 7:00 a.m., and stop seeing patients at 5:00 p.m., seeing patients approximately every 15 to 30 minutes.

21. Approximately 60 percent of the patients seen by the medical assistants in KMG's allergy clinic are Medicare beneficiaries.

22. Some of the patients seen in KMG's allergy clinic are TRICARE or part Medicare beneficiaries.

23. All patients seen by the medical assistants for allergy care are referred by a KMG provider to KMG's allergy clinic.

24. A provider can be a physician, a nurse practitioner, or a physician assistant.


25. The medical assistants in KMG's allergy clinic perform scratch tests or blood tests to diagnose the patient's allergy, and then send the test results to the referring provider to review.

26. The medical assistants in KMG's allergy clinic, along with the referring provider then follow established KMG protocol to recommend a course of treatment to the patient. The course of treatment could involve anything from avoidance to weekly serum immunization shots.

27. KMG then bills for the allergy services provided by the medical assistants under the referring provider's NPI regardless of whether or not the referring provider is supervising the medical assistant.

28. Medicare requires that the provider whose NPI is billed for services must be the person who rendered the services or the person who supervised the services.

29. For example, on August 30, 2012, KMG submitted a claim to Medicare for patient J.G. for allergy services. The claim form indicated that Dr. Livingstone was the rendering provider.

		Medicare Po Box 660031 Dallas, TX 75266-0031					
X				530262321A			
G	J		X	SAME			
		X					
		TX	X				
			X				
			X				
	X		X				
	X		X				
	X		X				
Signature on File		08/28/2014	Signature on File				
		D43467					
Livingstone MD David		1588654511					
				X			
477 0		784 91					
786 2							
08302012	08302012	11	99211	25	1, 2, 3	32 00 1	8235N4 1588654511
08302012	08302012	11	94010		2	54 00 1	8235N4 1588654511
08302012	08302012	11	95165		1	340 00 20	8235N4 1588654511
752654970	X	000100451380	X	426 00	426 00		
Livingstone MD, David K signature on file 08/28/14	Kaner Medical Group Bedford 1305 Airport Freeway Suite 220 Bedford TX 76021-6605 1639169295		Kaner Medical Group Po Box 210429 Bedford TX 76095-7429 (817) 358-5800 1639169295				

30. Patient J.G. was seen by the allergy clinic in Bedford, Texas at 2:00 p.m. on August 30, 2012.

Livingstone MD, David K
2:03 P

KANER MEDICAL GROUP, P.A.

OFFICE VISIT	CPT	DESCRIPTION	CPT	DESCRIPTION	CPT	DESCRIPTION	LABORATORY - OUT	CPT	DESCRIPTION
NEW PATIENT									
Expanded Focus	99201	Biopsy of nail	11755	Verruccaria	86115	ANA	86008		
Expanded Focus	99202	Burn, Initial TX, 1	86000	Finger Stick	86116	B12	86009		
Expanded Focus	99203	Burn, Dressing/Debrid. less than 5%	86020	Glucose	86049	CBC	86025		
Expanded Focus	99204	Cryotherapy for Acne	17240	HB A1C QW	86050	Chlamydia/GC DNA	86085		
Expanded Focus	99205	Debridement of nail 1-5	11720	HCG (urine)	81823	C & S - Urine	87085		
Expanded Focus	99206	Debridement of nail 6-10	11721	PAP Pap Smear Fee	89006	CRP	86140		
Expanded Focus	99207	Debridement of nail 11-15	11722	PPD (TB ID)	86540	Estriadiol	86270		
Expanded Focus	99208	Debridement of nail 16-20	11723	PTQW	86540	Ferritin	86270		
Expanded Focus	99209	Debridement of nail 21-25	11724	Stool (Guaiac) (up to 3 cans)	86270	FSH	86270		
Expanded Focus	99210	Debridement of nail 26-30	11725	Strip, A Test QW	86002	HCG Quant - Serum	84702		
Expanded Focus	99211	Debridement of nail 31-35	11726	Urine Drug Screen (each drug)	86190	HCG Quant - Serum	84703		
Expanded Focus	99212	Debridement of nail 36-40	11727	Urine Handling Fee	86000	HCG Quant - Serum	84704		
Expanded Focus	99213	Debridement of nail 41-45	11728			H. Pylori Ig G	86006		
Expanded Focus	99214	Debridement of nail 46-50	11729			HB A1C	86007		
Expanded Focus	99215	Debridement of nail 51-55	11730			HBsAg, anti-HBc, IgG, IgM	86008		
Expanded Focus	99216	Debridement of nail 56-60	11731			Iron Total & TIBC	86009		
Expanded Focus	99217	Debridement of nail 61-65	11732			Iron Total & TIBC	86010		
Expanded Focus	99218	Debridement of nail 66-70	11733			Iron Total & TIBC	86011		
Expanded Focus	99219	Debridement of nail 71-75	11734			Iron Total & TIBC	86012		
Expanded Focus	99220	Debridement of nail 76-80	11735			Iron Total & TIBC	86013		
Expanded Focus	99221	Debridement of nail 81-85	11736			Iron Total & TIBC	86014		
Expanded Focus	99222	Debridement of nail 86-90	11737			Iron Total & TIBC	86015		
Expanded Focus	99223	Debridement of nail 91-95	11738			Iron Total & TIBC	86016		
Expanded Focus	99224	Debridement of nail 96-100	11739			Iron Total & TIBC	86017		
Expanded Focus	99225	Debridement of nail 101-105	11740			Iron Total & TIBC	86018		
Expanded Focus	99226	Debridement of nail 106-110	11741			Iron Total & TIBC	86019		
Expanded Focus	99227	Debridement of nail 111-115	11742			Iron Total & TIBC	86020		
Expanded Focus	99228	Debridement of nail 116-120	11743			Iron Total & TIBC	86021		
Expanded Focus	99229	Debridement of nail 121-125	11744			Iron Total & TIBC	86022		
Expanded Focus	99230	Debridement of nail 126-130	11745			Iron Total & TIBC	86023		
Expanded Focus	99231	Debridement of nail 131-135	11746			Iron Total & TIBC	86024		
Expanded Focus	99232	Debridement of nail 136-140	11747			Iron Total & TIBC	86025		
Expanded Focus	99233	Debridement of nail 141-145	11748			Iron Total & TIBC	86026		
Expanded Focus	99234	Debridement of nail 146-150	11749			Iron Total & TIBC	86027		
Expanded Focus	99235	Debridement of nail 151-155	11750			Iron Total & TIBC	86028		
Expanded Focus	99236	Debridement of nail 156-160	11751			Iron Total & TIBC	86029		
Expanded Focus	99237	Debridement of nail 161-165	11752			Iron Total & TIBC	86030		
Expanded Focus	99238	Debridement of nail 166-170	11753			Iron Total & TIBC	86031		
Expanded Focus	99239	Debridement of nail 171-175	11754			Iron Total & TIBC	86032		
Expanded Focus	99240	Debridement of nail 176-180	11755			Iron Total & TIBC	86033		
Expanded Focus	99241	Debridement of nail 181-185	11756			Iron Total & TIBC	86034		
Expanded Focus	99242	Debridement of nail 186-190	11757			Iron Total & TIBC	86035		
Expanded Focus	99243	Debridement of nail 191-195	11758			Iron Total & TIBC	86036		
Expanded Focus	99244	Debridement of nail 196-200	11759			Iron Total & TIBC	86037		
Expanded Focus	99245	Debridement of nail 201-205	11760			Iron Total & TIBC	86038		
Expanded Focus	99246	Debridement of nail 206-210	11761			Iron Total & TIBC	86039		
Expanded Focus	99247	Debridement of nail 211-215	11762			Iron Total & TIBC	86040		
Expanded Focus	99248	Debridement of nail 216-220	11763			Iron Total & TIBC	86041		
Expanded Focus	99249	Debridement of nail 221-225	11764			Iron Total & TIBC	86042		
Expanded Focus	99250	Debridement of nail 226-230	11765			Iron Total & TIBC	86043		
Expanded Focus	99251	Debridement of nail 231-235	11766			Iron Total & TIBC	86044		
Expanded Focus	99252	Debridement of nail 236-240	11767			Iron Total & TIBC	86045		
Expanded Focus	99253	Debridement of nail 241-245	11768			Iron Total & TIBC	86046		
Expanded Focus	99254	Debridement of nail 246-250	11769			Iron Total & TIBC	86047		
Expanded Focus	99255	Debridement of nail 251-255	11770			Iron Total & TIBC	86048		
Expanded Focus	99256	Debridement of nail 256-260	11771			Iron Total & TIBC	86049		
Expanded Focus	99257	Debridement of nail 261-265	11772			Iron Total & TIBC	86050		
Expanded Focus	99258	Debridement of nail 266-270	11773			Iron Total & TIBC	86051		
Expanded Focus	99259	Debridement of nail 271-275	11774			Iron Total & TIBC	86052		
Expanded Focus	99260	Debridement of nail 276-280	11775			Iron Total & TIBC	86053		
Expanded Focus	99261	Debridement of nail 281-285	11776			Iron Total & TIBC	86054		
Expanded Focus	99262	Debridement of nail 286-290	11777			Iron Total & TIBC	86055		
Expanded Focus	99263	Debridement of nail 291-295	11778			Iron Total & TIBC	86056		
Expanded Focus	99264	Debridement of nail 296-300	11779			Iron Total & TIBC	86057		
Expanded Focus	99265	Debridement of nail 301-305	11780			Iron Total & TIBC	86058		
Expanded Focus	99266	Debridement of nail 306-310	11781			Iron Total & TIBC	86059		
Expanded Focus	99267	Debridement of nail 311-315	11782			Iron Total & TIBC	86060		
Expanded Focus	99268	Debridement of nail 316-320	11783			Iron Total & TIBC	86061		
Expanded Focus	99269	Debridement of nail 321-325	11784			Iron Total & TIBC	86062		
Expanded Focus	99270	Debridement of nail 326-330	11785			Iron Total & TIBC	86063		
Expanded Focus	99271	Debridement of nail 331-335	11786			Iron Total & TIBC	86064		
Expanded Focus	99272	Debridement of nail 336-340	11787			Iron Total & TIBC	86065		
Expanded Focus	99273	Debridement of nail 341-345	11788			Iron Total & TIBC	86066		
Expanded Focus	99274	Debridement of nail 346-350	11789			Iron Total & TIBC	86067		
Expanded Focus	99275	Debridement of nail 351-355	11790			Iron Total & TIBC	86068		
Expanded Focus	99276	Debridement of nail 356-360	11791			Iron Total & TIBC	86069		
Expanded Focus	99277	Debridement of nail 361-365	11792			Iron Total & TIBC	86070		
Expanded Focus	99278	Debridement of nail 366-370	11793			Iron Total & TIBC	86071		
Expanded Focus	99279	Debridement of nail 371-375	11794			Iron Total & TIBC	86072		
Expanded Focus	99280	Debridement of nail 376-380	11795			Iron Total & TIBC	86073		
Expanded Focus	99281	Debridement of nail 381-385	11796			Iron Total & TIBC	86074		
Expanded Focus	99282	Debridement of nail 386-390	11797			Iron Total & TIBC	86075		
Expanded Focus	99283	Debridement of nail 391-395	11798			Iron Total & TIBC	86076		
Expanded Focus	99284	Debridement of nail 396-400	11799			Iron Total & TIBC	86077		
Expanded Focus	99285	Debridement of nail 401-405	11800			Iron Total & TIBC	86078		
Expanded Focus	99286	Debridement of nail 406-410	11801			Iron Total & TIBC	86079		
Expanded Focus	99287	Debridement of nail 411-415	11802			Iron Total & TIBC	86080		
Expanded Focus	99288	Debridement of nail 416-420	11803			Iron Total & TIBC	86081		
Expanded Focus	99289	Debridement of nail 421-425	11804			Iron Total & TIBC	86082		
Expanded Focus	99290	Debridement of nail 426-430	11805			Iron Total & TIBC	86083		
Expanded Focus	99291	Debridement of nail 431-435	11806			Iron Total & TIBC	86084		
Expanded Focus	99292	Debridement of nail 436-440	11807			Iron Total & TIBC	86085		
Expanded Focus	99293	Debridement of nail 441-445	11808			Iron Total & TIBC	86086		
Expanded Focus	99294	Debridement of nail 446-450	11809			Iron Total & TIBC	86087		
Expanded Focus	99295	Debridement of nail 451-455	11810			Iron Total & TIBC	86088		
Expanded Focus	99296	Debridement of nail 456-460	11811			Iron Total & TIBC	86089		
Expanded Focus	99297	Debridement of nail 461-465	11812			Iron Total & TIBC	86090		
Expanded Focus	99298	Debridement of nail 466-470	11813			Iron Total & TIBC	86091		
Expanded Focus	99299	Debridement of nail 471-475	11814			Iron Total & TIBC	86092		
Expanded Focus	99300	Debridement of nail 476-480	11815			Iron Total & TIBC	86093		
Expanded Focus	99301	Debridement of nail 481-485	11816			Iron Total & TIBC	86094		
Expanded Focus	99302	Debridement of nail 486-490	11817			Iron Total & TIBC	86095		
Expanded Focus	99303	Debridement of nail 491-495	11818			Iron Total & TIBC	86096		
Expanded Focus	99304	Debridement of nail 496-500	11819			Iron Total & TIBC	86097		
Expanded Focus	99305	Debridement of nail 501-505	11820			Iron Total & TIBC	86098		
Expanded Focus	99306	Debridement of nail 506-510	11821			Iron Total & TIBC	86099		
Expanded Focus	99307	Debridement of nail 511-515	11822			Iron Total & TIBC	86100		
Expanded Focus	99308	Debridement of nail 516-520	11823			Iron Total & TIBC	86101		
Expanded Focus	99309	Debridement of nail 521-525	11824			Iron Total & TIBC	86102		
Expanded Focus	99310	Debridement of nail 526-530	11825			Iron Total & TIBC	86103		
Expanded Focus	99311	Debridement of nail 531-535	11826			Iron Total & TIBC	86104		
Expanded Focus	99312	Debridement of nail 536-540	11827			Iron Total & TIBC	86105		
Expanded Focus	99313	Debridement of nail 541-545	11828			Iron Total & TIBC	86106		
Expanded Focus	99314	Debridement of nail 546-550	11829			Iron Total & TIBC	86107		
Expanded Focus	99315	Debridement of nail 551-555	11830			Iron Total & TIBC	86108		
Expanded Focus	99316	Debridement of nail 556-560	11831			Iron Total & TIBC	86109		
Expanded Focus	99317	Debridement of nail 561-565	11832			Iron Total & TIBC	86110		
Expanded Focus	99318	Debridement of nail 566-570	11833			Iron Total & TIBC	86111		
Expanded Focus	99319	Debridement of nail 571-575	11834			Iron Total & TIBC	86112		

31. At the same time, Dr. Livingstone was seeing patient J.C. in Euless, Texas.

Livingstone MD, David K
2:25 P

KANER MEDICAL GROUP, P.A.

OFFICE VISIT	CPT	FEE	DERMATOLOGY	CPT	FEE	IN HOUSE LAB	CPT	FEE	LABORATORY - OUT	CPT	FEE
NEW PATIENT											
Focused	99201		Biopsy of Nail	11755		Verruccaria	86415		AKA	86038	
Expanded Focus	99202		Burn, Initial TX, 1	16300		Finger Suck	86416		B12	85025	
Detailed	99203		Burn, Dressing/Debridement less than 5%	16320		Glucose	82848		CBC	87500	
Comprehensive	99204		Cryotherapy for Actin	17340		Hb A1C QW	83500R		Chlamydia/RBC DNA	87005	
Complex Physical	99205		Debridement of nail 1-5	11720		HCG (urine)	81025		C & S - Urine	82550	
ESTABLISHED PATIENT											
Non Physician Contact	99211		Debridement of nail 6+	11721		PAP Handling Fee	95000		CPK	82700	
Focused	99212		Debridement Skin 10%	11000		PPO (TB ID)	95560		Estradiol	82726	
Expanded Focus	99213		Destruction - One Lesion	17000		PT-QW	86400W		Feet/An	82746	
Detailed	99214		Destruction 2-14 Lesions (each)	17003		Sisal Qualia (up to 3 cards)	82276		Folic Acid	83001	
Comprehensive	99215		Destruction Beyond lesion up to 14	17110		Sisal, A Test QW	81002		FSH	84702	
Modifier 22 - Unusual procedural services			Excision of nail	11750		Urine Drug screen (each drug)	80180		HCG Quant - Serum	84703	
Modifier 25 - Distinct E/M service on procedure day			Excision of nail	11750		Urine Handling Fee	95000		HCG Quant - Serum	84703	
Modifier 59 - Distinct procedural service			Excision of nail	11750		Urine Handling Fee	95000		H. Pylori Ig G	86677	
PREVENTIVE MEDICINE											
NEW PATIENT											
Under 1 year	99381		Area:			Area:			Area:		
1-4 years	99382		Area:			Area:			Area:		
5-11 years	99383		Area:			Area:			Area:		
12-17 years (Adolescent)	99384		Area:			Area:			Area:		
18-39 years	99385		Area:			Area:			Area:		
40-64 years	99386		Area:			Area:			Area:		
65 years and over	99387		Area:			Area:			Area:		
ESTABLISHED PATIENT											
Under 1 year	99391		Area:			Area:			Area:		
1-4 years	99392		Area:			Area:			Area:		
5-11 years	99393		Area:			Area:			Area:		
12-17 years (Adolescent)	99394		Area:			Area:			Area:		
18-39 years	99395		Area:			Area:			Area:		
40-64 years	99396		Area:			Area:			Area:		
65 years and over	99397		Area:			Area:			Area:		
Prostate Sp. DRE (Micare)	G0102		Area:			Area:			Area:		
Pelvic & Breast Exam (Micare)	G0101		Area:			Area:			Area:		
CONSULTATIONS											
Focused	99241		Area:			Area:			Area:		
Expanded Focus	99242		Area:			Area:			Area:		
Detailed	99243		Area:			Area:			Area:		
Comprehensive	99244		Area:			Area:			Area:		
High Complexity	99245		Area:			Area:			Area:		
SPECIAL SERVICES											
N/C	99024		Area:			Area:			Area:		
Office Visit Emergency	99058		Area:			Area:			Area:		
Prolonged OV 1 hour	99054		Area:			Area:			Area:		
Prolonged OV w/o PT 1 hour	99056		Area:			Area:			Area:		
Special Report	99080		Area:			Area:			Area:		
Weekend office visit	99051		Area:			Area:			Area:		
SUPPLIES											
Ace Wrap	A6449		Area:			Area:			Area:		
Air Cast Splint-Ankle	L4250		Area:			Area:			Area:		
Albuterol 0.083%	J7613		Area:			Area:			Area:		
Arm Sling	A4565		Area:			Area:			Area:		
Eye Tray	99070		Area:			Area:			Area:		
Nebulizer Set	A7003		Area:			Area:			Area:		
Xopenex 0.5 mg	J7614		Area:			Area:			Area:		
Surgical Tray	A4550		Area:			Area:			Area:		
Wrist Splint	L3908		Area:			Area:			Area:		
Wound Dressing	A6222		Area:			Area:			Area:		

DATE		TIME		PATIENT		REASON		DIAGNOSIS		ORDERS	
08/30/12		2:00 P		C. J.		Test Results/h					
TICKET NO.		DOCTOR		LOCATION		DOB		PRICE BALANCE			
451395		Dr. Livingstone		Kaner Medical Group Euless				\$0.00			
GUARANTOR		REFERRING DR.		LIVINGSTONE MD, David K							
SEX		ADDRESS		CITY/STATE		ZIP CODE		TODAY'S PAYMENT			
F											
INSURANCE COMPANY		POLICY ID		Universal Health Care							

32. Since Dr. Livingstone was in Euless, Texas at the time one of the medical assistants was providing allergy services to patient J.G. in Bedford, Dr. Livingstone could not

possibly be providing the required level of supervision to the medical assistant performing the allergy services in Bedford.

33. During her tenure at KMG, Johnson called a patient's insurance company to inquire about the patient's benefits for allergy treatment. On this call, the insurance company asked for Gambini's NPI.

34. Johnson could not find an NPI number for Gambini.

35. When Johnson asked Deborah Patterson ("Patterson"), another KMG employee, about Gambini's NPI number, Patterson told Johnson that Gambini did not have an NPI number.

36. Patterson told Johnson that Johnson should bill for all of Gambini's services using Kaner's NPI number.

37. Patterson told Johnson that Kaner's NPI number should be used to bill for Gambini's services because Gambini is not a medical doctor.

38. After learning that Gambini is not a medical doctor, Johnson called the medical board of Texas, and a representative confirmed to Johnson that all providers in Texas must be licensed in Texas.

39. Gambini is not licensed or permitted to practice medicine in Texas in any regard.

40. None of the medical assistants who provide allergy services are licensed to practice medicine in the state of Texas.

41. KMG knows that Gambini, and the other medical assistants are not licensed to practice medicine in Texas.

42. The medical assistants, in accordance with KMG's allergy protocol and with assistants from the provider, interpret allergy test results, design courses of treatment, and counsel patients one-on-one as to KMG's recommendations for allergy treatments.

43. KMG receives payment for the services provided by medical assistants.
44. KMG holds Gambini out as a licensed medical doctor.
45. KMG's website listed the initials "M.D." following Gambini's name.
46. At some point after Johnson instituted this action, KMG amended its website to remove the initials "M.D." following Gambini's name.
47. KMG submits claims to Medicare for the unlicensed services provided by the medical assistants.
48. Medicare paid out claims for approximately 60 percent of all allergy services provided by the medical assistants.
49. KMG submitted claims to TRICARE and part Medicare insurers for the medical assistants' unlicensed services.
50. TRICARE and part Medicare insurers pay out claims for the medical assistants' services.

KMG REFUSES TO REFUND UNNECESSARILY COLLECTED COPAYS TO PATIENTS

51. As part of her job duties, Johnson reviewed a financial document called an "aging," which refers to long-term outstanding credit balances.
52. While reviewing an aging, Johnson discovered that KMG charged patients who had Medicare as their primary insurance and Medicaid as their secondary insurance copays that should not have been charged.
53. At the time Johnson worked there, KMG owed approximately \$60,000 in unnecessarily collected copays to its Medicare patients.
54. Upon discovery that KMG owed its Medicare patients \$60,000, Johnson began refunding the unnecessarily collected patient copays.

55. Shortly after Johnson began refunding the unnecessarily collected copays, Jamie Baker ("Baker"), KMG's director of operations, told Johnson to stop refunding the copays.

56. Baker told Johnson that KMG could not afford to refund the unnecessarily collected copays to patients.

57. Baker informed Johnson that KMG would retain these funds unless and until patients called to complain.

58. Very few patients called to complain about the unnecessarily collected copays.

59. Johnson's colleague Patterson informed Johnson that KMG kept unnecessarily collected copays because "it looks good to banks."

60. KMG not only illegally collects copays from patients with Medicare as their primary insurance provider, and Medicaid as their secondary insurance provider, KMG also illegally retains the money from these patients and does not refund the illegally collected money.

KMG TERMINATES RELATOR BECAUSE OF HER QUESTIONS ABOUT KMG'S PRACTICES

61. KMG is almost entirely staffed by Medical Management Services ("MMS"), a managed service organization owned entirely by Kaner and Judith Kutler ("Kutler").

62. Kutler is also part owner, and Administrator of KMG.

63. While employed by MMS, Johnson was contracted out to KMG to provide service for, and on behalf of, KMG.

64. During the months that Johnson worked at KMG, she became suspicious of Defendants' practices.

65. On June 18, 2012, Johnson sent Baker and KMG CEO Judith Kutler an email describing a number of problems with KMG's billing and accounting practices, including failure to refund unnecessarily collected Medicare copays.

66. Baker read Johnson's email on or about June 18, 2012, and Kutler read Johnson's email three or four days after it was sent.

67. On June 26, 2012, Baker informed Johnson that Kutler wanted to speak with Johnson.

68. Johnson and Baker then went into Kutler's office.

69. When they met, Kutler told Johnson words to the effect of, "I don't want to lose the company behind you."

70. When she said, "I don't want to lose the company behind you," Kutler meant that Johnson's questioning of KMG's illegal business practices was the reason for her termination.

71. On June 26, 2012, the day she was terminated, Johnson was, at once, given three "final written notices" of discipline.

72. Johnson had never before received any verbal warnings or disciplinary notices related to the "final written notices."

73. KMG produced the "final written notices" as a pretext to terminating Johnson for questioning KMG's illegal business practices.

COUNT I

Defendants Knowingly Presented False or Fraudulent Claims for Payment to the United States of America in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A)

74. Johnson incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

75. Defendants knowingly present or cause to be presented to the United States of America, false or fraudulent claims, and knowingly fail to disclose material facts, in order to obtain payment or approval under the federally-funded Medicare program, TRICARE programs,

and part Medicare programs when they bill for allergy services performed by medical assistants under the referring provider's NPI even when the referring provider is not the provider supervising the services.

76. Defendants knowingly present or cause to be presented to the United States of America, false or fraudulent claims, and knowingly fail to disclose material facts, in order to obtain payment or approval under the federally-funded Medicare program, TRICARE programs, and part Medicare programs, in violation of 31 U.S.C. § 3729(a)(1)(A).

77. The United States of America, unaware of the falsity of the claims and/or statements made by Defendants, and in reliance on the accuracy thereof, pay Defendants for such false or fraudulent claims.

78. By reasons of the acts and conduct of Defendants in violation of 31 U.S.C. § 3729(a)(1)(A), the United States of America has suffered actual damages, including the amounts paid in response to all such fraudulent claims for payment.

79. By reason of Defendants' failure to properly bill for services provided by non-licensed medical assistants, the United States Government is, and has been, paying for medical tests and procedures that were performed by unlicensed practitioners without the appropriate supervision.

80. The United States of America is entitled to recover civil money penalties, and other monetary relief as deemed appropriate. And Johnson is entitled to recover litigation costs and reasonable attorneys' fees.

COUNT II

Defendants Knowingly Conceal or Knowingly and Improperly Avoid or Decrease an Obligation to Pay Money to the United States of America in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G)

81. Johnson incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

82. Defendants knowingly conceal or knowingly and improperly avoid an obligation to pay money to the United States of America when they collect money from patients who have Medicare as their primary insurance provider and Medicaid as their secondary insurance provider and still collect the full amount of reimbursement from Medicare and Medicaid for that patient's services.

83. Defendants knowingly conceal or knowingly and improperly avoid an obligation to pay money to the United States of America, in violation of 31 U.S.C. § 3729(a)(1)(G).

84. The United States of America, unaware of Defendants' reimbursement by the patient, pay Defendants in full for such false or fraudulent claims.

85. By reasons of the acts and conduct of Defendants in violation of 31 U.S.C. § 3729(a)(1)(G), the United States of America has suffered actual damages, including the amounts paid in response to all such fraudulent claims for payment.

86. By reason of Defendants' failure to properly return monies collected from patients with Medicare as their primary insurance provider, and Medicaid as their secondary insurance provider, the United States Government is, and has been, paying for services that KMG has already collected money for.

87. The United States of America is entitled to recover civil money penalties, and other monetary relief as deemed appropriate. And Johnson is entitled to recover litigation costs and reasonable attorneys' fees.

COUNT III

Defendants Retaliated Against Johnson for Engaging in Acts Protected by the False Claims Act, 31 U.S.C. § 3730(h)

88. Johnson incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

89. As set forth above, and in connection with the foregoing scheme, Defendants conspired to get false or fraudulent claims paid or approved by the United States of America in violation of the False Claims Act.

90. Johnson was an "employee, contractor, or agent" of KMG, and KMG and Kaner are "employers," as each of those terms is defined by the False Claims Act.

91. Johnson's employment was terminated as a result of her voluntarily performing lawful acts to investigate one or more violations of the False Claims Act, including questioning KMG's business practices and attempting to refund unnecessarily collected and improperly retained patient copays. At all relevant times, Johnson was engaging in activity protected by the False Claims Act. Defendants, knowing that Johnson was engaging in such activity, terminated her employment because of her protected conduct.

92. To redress harms she suffered as a result of the acts and conduct of Defendants in violation of 31 U.S.C. § 3730(h), Johnson is entitled to damages, including two times the amount of back pay, interest on back pay, and compensation for special damages, including personal injury damages for pain and suffering, emotional distress, loss of reputation, back pay, and

interest, and any other damages available by law including litigation costs and reasonable attorneys' fees.

JURY DEMAND

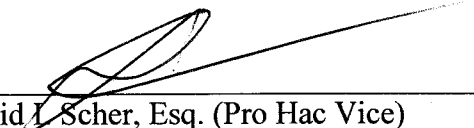
93. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Johnson hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Relator Darilyn Johnson, acting on behalf of, and in the name of, the United States of America, and on her own behalf, demands and prays that judgment be entered against Defendants for violations of the False Claims Act, as follows:

- (a) In favor of the United States of America against Defendants for treble the amount of damages to the federal Medicare program, the TRICARE program, and other part Medicare programs from the submission of false claims plus the maximum civil penalties for each violation of the False Claims Act;
- (b) In favor of Relator for the maximum amount pursuant to 31 U.S.C. § 3730(d) to include reasonable expenses, attorneys' fees and costs incurred by Relator;
- (c) For all costs of the False Claims Act civil action;
- (d) In favor of Relator for all compensatory and punitive damages, including personal injury damages for pain and suffering, emotional distress, and loss of reputation, back pay, and interest, and attorneys' fees and costs to which she is entitled under 31 U.S.C. § 3730(h);
- (e) In favor of Relator and the United States of America for such other and further relief, at law or in equity, as this court deems to be just and equitable;
- (f) Such other relief as this Court deems just and appropriate.

Respectfully submitted,



David I. Scher, Esq. (Pro Hac Vice)
R. Scott Oswald, Esq. (Pro Hac Vice)

THE EMPLOYMENT LAW GROUP, P.C.
888 17th Street, NW, 9th Floor
Washington, D.C. 20006
(202) 261-2803
(202) 261-2835 (facsimile)
Dscher@employmentlawgroup.com
Soswald@employmentlawgroup.com

Richard B. Roper
State Bar No. 17233700
Jennifer Ecklund
State Bar No. 24045626
David C. Schulte
State Bar No. 24037456

THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
(214) 969-1700
(214) 969-1751 (facsimile)
ATTORNEYS FOR QUI TAM
RELATOR DARILYN JOHNSON

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2014, a true and correct copy of this document was served via first-class mail (and a courtesy copy by email) on the following:

Clayton E. Devin
Macdonald Devin, PC
3800 Renaissance Tower
1201 Elm Street
Dallas, TX 75270
Counsel for Defendants

Rebecca S. Davies
Butzel Long, PC
150 W. Jefferson Avenue, Suite 100
Detroit, MI 48226
Counsel for Defendants

Alan Rogalski
Warner Norcross & Judd LLP
2000 Town Center, Suite 2700
Southfield, Michigan 48075-1318
Counsel for Defendants

Scott Hogan, Esq.
U.S. Attorneys Office
1100 Commerce Street, Third Floor
Dallas, TX 75242-1699
Counsel for the Government



David C. Schulte